

HOUSE BILL No. 1082

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-24.

Synopsis: Security freezes on credit reports. Provides that a consumer may prevent access to the consumer's credit report by requesting that a consumer reporting agency place a security freeze on the credit report. Prohibits a consumer reporting agency from releasing a credit report that is subject to a security freeze unless the consumer requests the release of the report: (1) to a specified third party; or (2) for a specified period. For a credit report subject to a security freeze, sets forth procedures for a consumer to request the: (1) release of the credit report; or (2) removal of the security freeze. Requires a consumer reporting agency to develop secure procedures to process, within 15 minutes of receiving a request, a telephonic or an electronic authorization from a consumer to: (1) release a credit report subject to a security freeze; or (2) remove a security freeze. Provides that specified persons may receive a credit report that is subject to a security freeze. Provides that specified persons are not required to place a security freeze on a consumer's credit report. Makes a violation of the requirements and restrictions concerning security freezes a Class A infraction. Provides a cause of action to a consumer aggrieved by a person's negligent or willful failure to comply with the requirements and restrictions concerning security freezes.

Effective: July 1, 2007.

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January 8, 2007, read first time and referred to Committee on Financial Institutions.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1082

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-24 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]:

4 **Chapter 24. Security Freezes for Credit Reports**

5 **Sec. 1. As used in this chapter, "consumer" means an**
6 **individual:**

7 (1) whose principal residence is in Indiana; and

8 (2) whose credit information and history is recorded in a
9 credit report.

10 **Sec. 2. As used in this chapter, "consumer reporting agency"**
11 **has the meaning set forth in 15 U.S.C. 1681a(f).**

12 **Sec. 3. (a) As used in this chapter, "credit report" means any**
13 **communication of information that:**

14 (1) is made by a consumer reporting agency by written, oral,
15 electronic, or other means;

16 (2) bears on a consumer's creditworthiness, credit standing,
17 or credit capacity;

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(3) is used, expected to be used, or collected for the purpose of serving as a factor in establishing the consumer's eligibility for:

- (A) credit or insurance to be used primarily for personal, family, or household purposes;
- (B) employment purposes; or
- (C) any other purpose authorized by 15 U.S.C. 1681b.

(b) The term does not include any communication of information described in 15 U.S.C. 1681a(d)(2).

Sec. 4. As used in this chapter, "security freeze" means a notice that:

- (1) is placed on a consumer's credit report:
 - (A) by a consumer reporting agency; and
 - (B) at the request of the consumer; and
- (2) prohibits the consumer reporting agency from releasing the consumer's credit report or any information from the credit report, other than information that a security freeze is in effect with respect to the credit report, without the authorization of the consumer as provided under this chapter.

Sec. 5. (a) A consumer may place a security freeze on the consumer's credit report by:

- (1) sending a written request by certified mail to a consumer reporting agency; or
- (2) making a request to a consumer reporting agency through a secure electronic mail connection provided by the consumer reporting agency.

(b) Except as provided in section 11 of this chapter, a consumer reporting agency that receives a request under subsection (a) shall place a security freeze on the consumer's credit report not later than five (5) business days after receipt of the request.

Sec. 6. Not later than ten (10) business days after receiving a request for a security freeze under section 5 of this chapter, a consumer reporting agency shall issue to the consumer a written confirmation that a security freeze has been placed on the consumer's credit report. The confirmation required by this section must include the following:

- (1) A unique:
 - (A) personal identification number; or
 - (B) password;
 other than the consumer's Social Security number, to be used by the consumer to perform any of the acts described in subdivision (2).

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- (2) Written instructions explaining how the consumer may:
- (A) release the consumer's credit report to one (1) or more specified third parties;
 - (B) temporarily lift the security freeze for a specified period; or
 - (C) remove the security freeze.

(3) Written instructions explaining how the consumer may request that the consumer reporting agency issue the same or a new personal identification number or password to the consumer if the consumer:

- (A) fails to retain the original personal identification number or password issued by the consumer reporting agency under subdivision (1); or
- (B) wishes to obtain a new personal identification number or password of the consumer's own choosing.

Upon receiving a request described in this subdivision, the consumer reporting agency shall issue the same or a new personal identification number or password to the consumer if the consumer has provided information sufficient to identify the consumer, as specified by the consumer reporting agency in the instructions provided to the consumer under this subdivision. If the consumer's request is made using a method described in section 5(a) of this chapter, the consumer reporting agency shall send, by certified mail, a written notice of the requested personal identification number or password to the consumer not later than five (5) business days after receiving the consumer's request. If the consumer's request is made using any method developed by the consumer reporting agency under section 7(d) of this chapter, the consumer reporting agency shall issue, using the same method by which the consumer's request is made, the requested personal identification number or password not later than fifteen (15) minutes after receiving the consumer's request.

Sec. 7. (a) Except as provided in section 10 of this chapter, if a security freeze has been placed on a consumer's credit report, the consumer reporting agency that placed the security freeze on the credit report shall not release the credit report unless the consumer authorizes the consumer credit reporting agency to:

- (1) release the consumer's credit report to one (1) or more specified third parties; or
 - (2) temporarily lift the security freeze for a specified period.
- (b) A consumer who seeks to authorize the release of the

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consumer's credit report under subsection (a)(1) or (a)(2) shall request the release by contacting the consumer reporting agency by any method:

- (1) described in section 5(a) of this chapter; or
- (2) developed by the consumer reporting agency under subsection (d).

(c) A request by a consumer under subsection (b) must include the following:

(1) Information sufficient to identify the consumer, as specified by the consumer reporting agency in the instructions provided to the consumer under section 6(2) of this chapter.

(2) The unique personal identification number or password assigned to the consumer under section 6(1) or 6(3) of this chapter.

(3) If the consumer seeks a release of the consumer's credit report under subsection (a)(1), information sufficient to identify the parties to whom the credit report is to be released, as specified by the consumer reporting agency in the instructions provided to the consumer under section 6(2) of this chapter.

(4) If the consumer seeks to allow the release of the consumer's credit report under subsection (a)(2), the period during which the security freeze is to be temporarily lifted.

(d) A consumer reporting agency shall develop secure procedures to receive and process, within fifteen (15) minutes of receiving a request, an authorization from a consumer under subsection (b) by any of the following:

- (1) Telephone.
- (2) Facsimile.
- (3) The Internet.
- (4) Other electronic media.

The procedures developed by a consumer reporting agency under this subsection must require the consumer to provide the information set forth in subsection (c).

(e) A consumer reporting agency that receives a request from a consumer under this section shall comply with the request within the following time frames:

(1) Not later than three (3) business days after receiving the request, if the consumer makes the request by a method described in section 5(a) of this chapter.

(2) Not later than fifteen (15) minutes after receiving the request, if the consumer makes the request by any method

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developed by the consumer reporting agency under subsection (d). However, a consumer reporting agency is not required to comply with a consumer's request within the time frame set forth in this subdivision if:

(A) the consumer does not provide one (1) or more of the items listed in subsection (c); or

(B) the consumer reporting agency's ability to comply with the request within the time frame set forth in this subdivision is prevented by any of the following:

(i) An act of God, including fire, an earthquake, a hurricane, a storm, or a similar natural disaster or phenomenon.

(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.

(iii) An operational interruption, including an electrical failure, an unanticipated delay in the delivery of equipment or replacement parts, computer hardware or software failures inhibiting response time, or similar disruptions.

(iv) A governmental action, including an emergency order or regulation, a judicial action, a law enforcement action, or a similar directive.

(v) Regularly scheduled maintenance of, or updates to, the consumer reporting agency's computer systems, if the maintenance activities or updates occur other than during normal business hours.

(vi) Commercially reasonable maintenance of, or repairs to, the consumer reporting agency's computer systems, if the maintenance activities or repairs are unexpected or are necessitated by unanticipated conditions or malfunctions.

(vii) Receipt of a request under this section other than during normal business hours.

Sec. 8. (a) A third party that requests a consumer's credit report in connection with an application by the consumer for credit shall treat the application for credit as incomplete if:

- (1) a security freeze has been placed on the credit report;
- (2) the consumer has not authorized the release of the consumer's credit report under section 7 of this chapter; and
- (3) the consumer reporting agency refuses to release the credit

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report to the third party based on subdivisions (1) and (2).

(b) A consumer reporting agency that refuses under subsection (a)(3) to release a credit report shall notify the third party requesting the credit report of the existence of a security freeze as the basis for the refusal to release the credit report to the third party.

Sec. 9. (a) A security freeze remains in effect until the consumer who requested the security freeze requests that the security freeze be removed. A consumer who seeks to remove a security freeze shall request the removal by contacting the consumer reporting agency by any method:

- (1) described in section 5(a) of this chapter; or
- (2) developed by a consumer reporting agency under section 7(d) of this chapter for receiving a consumer's request to release a credit report.

(b) A request by a consumer under subsection (a) must include the following:

- (1) Information sufficient to identify the consumer, as specified by the consumer reporting agency in the instructions provided to the consumer under section 6(2) of this chapter.
- (2) The unique personal identification number or password assigned to the consumer under section 6(1) or 6(3) of this chapter.

(c) A consumer reporting agency must remove a security freeze within the following time frames:

- (1) Not later than three (3) business days after receiving a request under subsection (a), if the consumer makes the request by a method described in section 5(a) of this chapter.
- (2) Not later than fifteen (15) minutes after receiving a request under subsection (a), if the consumer makes the request by any method developed by the consumer reporting agency under section 7(d) of this chapter. However, a consumer reporting agency is not required to comply with a consumer's request within the time frame set forth in this subdivision if:
 - (A) the consumer does not provide one (1) or more of the items listed in subsection (b); or
 - (B) the consumer reporting agency's ability to comply with the request within the time frame set forth in this subdivision is prevented by any of the following:
 - (i) An act of God, including fire, an earthquake, a hurricane, a storm, or a similar natural disaster or phenomenon.

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(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.

(iii) An operational interruption, including an electrical failure, an unanticipated delay in the delivery of equipment or replacement parts, computer hardware or software failures inhibiting response time, or similar disruptions.

(iv) A governmental action, including an emergency order or regulation, a judicial action, a law enforcement action, or a similar directive.

(v) Regularly scheduled maintenance of, or updates to, the consumer reporting agency's computer systems, if the maintenance activities or updates occur other than during normal business hours.

(vi) Commercially reasonable maintenance of, or repairs to, the consumer reporting agency's computer systems, if the maintenance activities or repairs are unexpected or are necessitated by unanticipated conditions or malfunctions.

(vii) Receipt of a request under this section other than during normal business hours.

Sec. 10. (a) As used in this section, "person" includes:

- (1) a subsidiary;
- (2) an affiliate;
- (3) an agent; or
- (4) an assignee;

of the person.

(b) A security freeze on a consumer's credit report does not prohibit a consumer reporting agency from providing the credit report to the following persons without the authorization of the consumer:

- (1) A person to whom the consumer owes a financial obligation in connection with any of the following:**

(A) An account, including a demand deposit account, that the consumer has with the person, for the purpose of:

- (i) reviewing the account, including activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements; or**
- (ii) collecting the obligation owed in connection with the account.**

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(B) A contract, for the purpose of collecting the obligation owed in connection with the contract.

(C) A negotiable instrument that the consumer has issued to the person, for the purpose of collecting the obligation owed in connection with the negotiable instrument.

(2) A person to whom the consumer has released the consumer's credit report under section 7(a)(1) of this chapter.

(3) Any:

(A) agency of the state or of a political subdivision of the state, including a state or local child support enforcement agency (as defined in 15 U.S.C. 1681a(j)(2));

(B) law enforcement agency;

(C) court; or

(D) collection agency;

acting under a court order, warrant, or subpoena.

(4) Any person for the purpose of prescreening, as provided in the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(5) Any person administering a credit monitoring subscription service to which the consumer has subscribed.

(6) The consumer, upon the consumer's request, or any other person for the purpose of providing the consumer with a copy of the consumer's credit report upon the consumer's request.

Sec. 11. The following persons are not required to place a security freeze on a consumer's credit report:

(1) A consumer reporting agency that acts only as a reseller (as defined in 15 U.S.C. 1681a(u)) of information.

(2) A:

(A) check services; or

(B) fraud prevention services;

company that reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment.

(3) A deposit account information service company that issues reports concerning account closures due to:

(A) fraud;

(B) substantial overdrafts;

(C) ATM abuse; or

(D) similar negative information concerning a consumer; to inquiring financial institutions for use only in reviewing a consumer's request for a deposit account at the inquiring

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financial institution.

Sec. 12. (a) Except as provided in subsection (b), if a security freeze is in place with respect to a consumer's credit report, a consumer reporting agency may not change any of the following official information in the consumer report without sending written confirmation of the change to the consumer not later than thirty (30) days after the change is posted to the consumer's credit report:

(1) Name.

(2) Date of birth.

(3) Social Security number.

(4) Address.

In the case of an address change, the written confirmation required under this section shall be sent to both the new address and the old address.

(b) Written confirmation is not required under this section for technical modifications of a consumer's official information, including changes involving:

(1) the use of name or street:

(A) abbreviations; or

(B) complete spellings; or

(2) transpositions of numbers or letters in a consumer's name or address.

Sec. 13. A consumer reporting agency may not impose a charge for:

(1) placing a security freeze on a credit report under section 5 of this chapter;

(2) issuing the same or a new personal identification number or password to a consumer under section 6(3) of this chapter;

(3) releasing a consumer's credit report to a third party upon request of the consumer under section 7(a)(1) of this chapter;

(4) temporarily lifting a security freeze under section 7(a)(2) of this chapter; or

(5) removing a security freeze under section 9 of this chapter.

Sec. 14. A person who violates this chapter commits a Class A infraction. Each violation of this chapter constitutes a separate offense.

Sec. 15. (a) Any person who is negligent in failing to comply with this chapter with respect to a consumer is liable to the consumer in an amount equal to the sum of:

(1) an amount equal to the greater of:

(A) the damages actually suffered by the consumer as a

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1 result of the person's negligence; or
 2 (B) five hundred dollars (\$500); and
 3 (2) in the case of a successful action by a consumer under this
 4 section, the costs of the action, plus reasonable attorney's fees
 5 as determined by the court.

6 An action under this section must be brought in the circuit or
 7 superior court of the aggrieved consumer's county of residence.

8 (b) If a court finds that an unsuccessful pleading, motion, or
 9 other paper filed in connection with an action under this section
 10 was filed in bad faith or for purposes of harassment, the court may
 11 award to the prevailing party attorney's fees that are reasonable
 12 in relation to the work expended in responding to the pleading,
 13 motion, or other paper.

14 Sec. 16. (a) Any person who willfully fails to comply with the
 15 requirements of this chapter with respect to a consumer is liable to
 16 the consumer in an amount equal to the sum of:

17 (1) an amount equal to the greater of:

18 (A) three (3) times the damages actually suffered by the
 19 consumer as a result of the person's willful failure to
 20 comply; or

21 (B) one thousand dollars (\$1,000); and

22 (2) in the case of a successful action by a consumer under this
 23 section, the costs of the action, plus reasonable attorney's fees
 24 as determined by the court.

25 An action under this section must be brought in the circuit or
 26 superior court of the aggrieved consumer's county of residence.

27 (b) If a court finds that an unsuccessful pleading, motion, or
 28 other paper filed in connection with an action under this section
 29 was filed in bad faith or for purposes of harassment, the court may
 30 award to the prevailing party attorney's fees that are reasonable
 31 in relation to the work expended in responding to the pleading,
 32 motion, or other paper.

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